IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.614/2006

Reserved on.28.5.2007

Decided on. June 28, 2007.

H.P. State Cooperative Marketing and Consumer Federation

…Petitioner.

Versus

State of H.P. & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes*

For the petitioner :	**Mr. K.D. Sood, Advocate.**
For the respondents No.1 &2	**Mr. M.S.Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Dy. Advocate Generals.**
For the respondent No.3.	**Mr. D.P. Chauhan, Advocate.**

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition as culled out from the pleadings of the parties are that a charge-sheet was issued to the respondent No.3 on 4th October, 1994. The Inquiry Officer was appointed and he had submitted his report to the Disciplinary Authority dated 24.7.1997. The Board of Directors of the petitioner-federation has not agreed with the findings recorded by the Inquiry officer with regard to the charges No. 1, 2 and 12 respectively. The Board of Directors had come to the conclusion that the charges No.1, 2 and 12 stood proved against the respondent No.3. The inquiry report was furnished to the Disciplinary authority on 24th July, 1997. A memorandum

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

was issued to the respondent No.3 on 11th May, 2000 enclosing therewith the copy of the report of the Inquiry Officer dated 24th July, 1997. It has come in the memorandum that the Board of Directors had agreed with the findings of the Inquiry Officer in respect of charges No. 3 to 11 and 13, however, the Board of Directors had disagreed with the findings of the Inquiry Officer in respect of the charges No. 1, 2 and 12. The copy of the detailed disagreement note was also enclosed with the memorandum. He was called upon to make a representation against the proposed penalty of dismissal from service within a period of 15 days from the receipt of the memorandum. He had made a detailed representation to the memorandum on 25.5.2000 and as there was additional information in the reply to memorandum on 29.5.2000, the penalty of withholding of two annual increments with cumulative effect was imposed upon him on 26.6.2002. He preferred a representation against the imposition of penalty to the Board of Directors on 26.3.2003. The same was rejected by the Board of Directors on 14.7.2003. Feeling aggrieved by the communication dated 14.7.2003, he preferred revision petition before the Registrar Cooperative Societies on 3.12.2003. The petition preferred by respondent No.3 was accepted by the respondent No.2 on 31.12.2004 and the order of the Managing Director dated 26.6.2002 and Board of Directors dated 14.7.2003 were set aside. The petitioner-federation filed a petition under section 94 of the H.P. Cooperative Societies Act, 1968 before the Principal Secretary (Cooperation) to the Government of Himachal Pradesh. The petition preferred under section 94 of the H.P. Cooperative Societies Act, 1968 was dismissed by the Principle Secretary Cooperation on 30th July, 2005.

Mr. K.D. Sood, Advocate appearing on behalf of the petitioner-Federation had strenuously argued that the orders dated 31.12.2004 and

30th July, 2005 are not sustainable in the eyes of law and both the authorities have failed to exercise the jurisdiction vested in them.

Mr. D.P. Chauhan, Advocate appearing on behalf of the respondent No. 3 had supported the orders dated 31.12.2004 and 30th July, 2005.

I have heard the parties and perused the record.

The charge-sheet was issued to the respondent No.3 on 4.10.1994 and the inquiry report is dated 24.7.1997. The memorandum has been issued to respondent No.3 on 11.5.2000 whereby for the first time the copy of the inquiry report along with disagreement note was enclosed. He has been directed to file a representation against the proposed penalty within a period of 15 days. The procedure adopted by the Federation of not supplying the copy of the inquiry report and detailed disagreement note before making up its mind to impose any of the penalties was bad in law. It is settled law that the copy of the inquiry report is to be furnished by the disciplinary authority to enable an individual to make a representation against the same pointing out any deficiency or shortcomings in the same. It is only after the delinquent made a representation against the inquiry report that any of the penalties, may be, major or minor can be imposed by the disciplinary authority. This position of law is no more *res integra* in view of the law laid down by the Apex Court in ***Managing Director, ECIL & others v. B. Karunakar & others***, 1993 (4) 727 where their Lordships have held as under:

> **"The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any,**

recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice required that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

The question which now needs consideration is: Whether the respondent No.3 was required to be heard before the disagreement note was recorded by the Board of Directors with the inquiry report on charges No. 1, 2 and 12? Admittedly, respondent No.3 has not been heard at the time of disagreement and without hearing him the charges No. 1, 2 and 12 were held to be proved against him. This Court is of the opinion that the Board of Directors before recording disagreement with the inquiry report on charges No. 1, 2 and 12 was required to issue a notice to respondent No.3 and after hearing him, suitable action could have been taken.

A Division Bench of Madhya Pradesh High Court in ***S.S. Koshal V. State Bank of India,*** 1992 LAB. I.C. 2013 has held that wherein an employer takes assistance of an Enquiry Officer, on whose report he has to base his verdict, the rule of natural justice demands that whatever adverse material exists including the report of the Enquiry Officer and the opinion of the disciplinary authority, containing his findings or reasons of his disagreement, should be duly disclosed to the delinquent and he is effectively heard before the final decision is taken, so that he gets full opportunity to meet such adverse material before he is made to suffer punishment.

In ***Shri Ram V. Bank of Baroda and others***, 1994 (2) LLJ 116, A Division Bench of Allahabad High Court has held as under:

> **"It is undisputed that the enquiry officer found various charges relating to financial irregularities proved against the petitioner, but found the charge relating to possession of disproportionate assets not proved. On receipt of the said report and on a consideration of the materials on the enquiry file, the disciplinary authority found the said charge also to be proved. It is also undisputed that in arriving at his conclusion regarding this charge, the disciplinary authority neither gave any indication about his attitude, nor any notice or opportunity of hearing to petitioner in this regard. The conclusion of the**

disciplinary authority in this regard thus was arrived at behind the back of the petitioner and consequently in our opinion constituted a breach of principles of natural justice. The principles laid down by the Supreme Court in Narayan Mishra v. State of Orissa 1969 SLR 657 as well as by a Division Bench of this Court in (R.P. Srivastava v. State Bank of India) 1990 (8) L.C. D. 497, in this regard are fully applicable to this case, and the findings arrived at by the Disciplinary Authority behind the back of the petitioner, and the impugned order of dismissal and the resultant order of dismissal is vitiated and liable to be set aside."

The Hon'ble Supreme Court in ***Ram Kishan v. Union of India and others,*** 1996 (1) LLJ- 982 has held as under:

"The next question is whether the show cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by disciplinary authority cannot cure the defect. But, on the facts in this case, the only charge which

was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show cause notice, cannot be said to be vague. Therefore, we do not finding any justification to hold that the show cause notice is vitiated by an error of law, on the facts in this case."

Similarly the Apex Court has held in ***Punjab National and others Vs. Kunj Behari Misra and another***, LLJ 1998 (2) 809 that the disciplinary authority should give the delinquent officer an opportunity to represent before it disagrees with inquiring authority and records its findings. Their Lordships have held as under:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

The Apex Court in ***Yoginath D. Bagde Vs. State of Maharashtra and another,*** (1999) 7 SCC 739 has held as under:

"Recently, a three Judge Bench of this Court in Punjab National Bank v. Kunj Behari Misra relying upon the earlier

decisions of this Court in State of Assam v. Bimal Kumar Pandit, Institute of Chartered Accountants of India v. L.K. Ratna as also the Constitution bench decision in Managing Director, ECIL v. B. Karunakar and the decision in Ram Kishan v. Union of India has held that: (SCC p. para 17)

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority ahs recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposed to differ with such conclusion, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

The Court further observed as under: (SCC p. 96, para 18)

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary authority stand concluded with the decision of the disciplinary authority. It is disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed

before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

The Court further held that the contrary view expressed by this Court in State Bank of India v. S.S. Koshal and State of Rajasthan v. M.C. Saxena was not correct."

Similarly, the High Court of Madras in ***Devakumar L.M.V V. G.M., Canara Bank and another***, 2001 (1) LLJ 358 has held that where disciplinary authority disagrees with the findings of the Inquiring Authority it is bound to give an opportunity to the delinquent.

A Division Bench of High Court of Andhra Pradesh in ***K.S.S.N. Sarma Vs. State Bank of India and others,*** 2002 (2) Labour Law Journal 482 has held as under:

"At the hearing of the appeal, the only question canvassed by the learned Counsel for the appellant Mr. Srinivas, is that inasmuch as the disciplinary authority differed from the conclusions arrived at by the inquiring authority in respect of charge No. 1 (c), the order of imposition of penalty is unsustainable since no opportunity of representation has been afforded to the charged employee before the conclusion of the disciplinary authority differing from the conclusion arrived at by the inquiring authority. Learned Counsel for the appellant placed reliance on the decision of the Supreme Court in Punjab National Bank and others v. Kunj Behari Misra (1998-II-LLJ-809 (SC) in support of this contention. In the said decision, after an analysis of the general principles and earlier authorities on this aspect of the matter, the Supreme Court declared the law to the effect that whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its own findings on such

> **charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed to the delinquent officer so as to enable him an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. This principle has been enunciated as an emanation of the principles of natural justice and held to be an integral part of procedural due process. Conformity with the said binding principle of law would invalidate the finding in respect of Charge No.1 (c).**

One thing is clear from the memorandum dated 26.6.2002 that the same is not a speaking order. Once the delinquent has been permitted to make a representation against the inquiry report, the same was to be taken into consideration while issuing memorandum dated 26.6.2002. Respondent No.3 has made a representation before the Board of Directors, but the same has been rejected without a speaking order on 14.7.2003. It is settled law that the orders should be speaking and reasoned more particularly when their validity is to be adjudged by the Courts.

The Apex Court in ***Institute of Chartered Accountants of India v. L.K. Ratna and others,*** 1986 (4) 537 has held that the Council of the Institute of Chartered Accountant of India was obliged to give reasons for its findings that a member is guilty of misconduct. Their Lordships have held as under:

> **"Before we conclude, we may refer to a third point raised before us, the point being whether the Council is obliged to give reasons for its findings that a member is guilty of misconduct. It seems to us that it is bound to do so. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the**

member has been given a right of appeal to the High Court under section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the findings rendered by the Council. The Council must, therefore, state the reasons for its findings."

The Apex Court in S***.N. Mukherjee Versus Union of India*** (1990) 4 SCC 594 has held that the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities . Their Lordships have held as under:

"The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making, keeping in view the expanding horizon of the principles of natural justice, we are of the opinion that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities."

The order passed by the Board of Directors dated 14.7.2003 being not a speaking order has been considered in detail by the respondent No.2 in his order dated 31.12.2004. This Court affirms the view of respondent No.2 that the order passed by the Board of Director was

required to be a speaking order. The charge-sheet has been issued to the respondent No.3 admittedly on 4.10.1994 and the inquiry report is dated 24.7.1997. The memorandum has been issued to respondent No.3 on 11.5.2000 after a gap of about three years. It is incumbent upon the disciplinary authority to take appropriate decision after the receipt of report within a reasonable period on the basis of the principles enshrined in CCS (CCA) Rules, 1965. The relevant instructions issued below Rule 15 of CCS (CCA) Rules, 1965 prescribe that the final order should be passed by the disciplinary authority within a period of three months from the receipt of the copy of the inquiry report. The instructions No. 11 and 11-A below Rule 15 of the CCS (CCA), Rules, 1965 are reproduced below:

> ***"(11) Time-limit for passing final orders on the inquiry report.-*** **The feasibility of prescribing a time-limit within which the Disciplinary Authority should pass the orders on the report of the Inquiry Officer, and requiring that authority to submit a report to the next higher authority in cases where the time-limit cannot be adhered to, explaining the reasons therefor, was examined. It is felt that while both in the public interest as well as in the interest of employees no avoidable delay should occur in the disposal of disciplinary cases, it is necessary that sufficient time is available to the Disciplinary Authority to apply its mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. While, therefore, it has to be ensured that fixing of any time-limit on the disposal of the inquiry report by the Disciplinary Authority by making a provision in this regard in the CCS (CCA) Rules should not lead to any perfunctory disposal of such cases, taking all**

relevant factors into consideration, it is felt that in cases which do not require consultation with the Central Vigilance Commission or the union Public Service Commission, it should normally be possible for the Disciplinary Authority to take a final decision on the inquiry report within a period of three months at the most. In cases where the Disciplinary Authority feels that it is not possible to adhere to this time-limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the CVC and the UPSC also, every effort should be made to ensure that such cases are disposed of as quickly as possible.

[G.I., C.S. (Dept. of Per.), O.M. No. 39/43/70-Ests. (A), dated the 8th January, 19971.]

(11-A) Final orders should be passed within three months.-*

3. Though no specific time-limit has been prescribed in the above OM (11 above) in respect of cases where consultation with CVC and UPSC is required, it is imperative that the time limit of three months prescribed for other cases should be adhered to in such cases after receipt of the advice of the UPSC. All Ministers/Departments are, therefore, requested to dispose of disciplinary cases as quickly as possible within the time-limit indicated above.

[G.I. Dept. of Per. & Trg. O.M. No. 11012/21/98-Estt. (A), dated the 11th November, 1998.- Para.3]

In view of the above discussion, the order passed by respondent No.2 and Principle Secretary (Cooperation) to the Government of

Himachal Pradesh cannot be faulted with. The order passed by the respondent No.2 is a speaking order and the relevant provisions of law applicable in the case have been discussed and the conclusions arrived at by the respondent No.2 that the order of the Board of Directors should have been a speaking order is in conformity with the law cited above. Though the order passed by the Principle Secretary (Cooperation) to the Government of Himachal Pradesh is cryptic but the same is also upheld in view of the above discussion more particularly when the petitioner - federation has not followed the mandatory provisions of law as well as the ratio of the judgments cited hereinabove.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

June 28, 2007
Awasthi